

May 4, 2009

VIA FAX

Ms. Dana Heinrich
Senior Staff Counsel
State Water Resource Control Board
1001 I Street, 14th Floor
Sacramento, California 95814

Re: Late Filed Documents – DWR/USBR Change of Place of Use Petition

Dear Ms. Heinrich:

In response to Mr. Lindsay's letter of May 1, 2009 regarding the possible consideration of the late filed documents of DWR and USBR, the California Sportfishing Protection Alliance (CSPA) and the California Water Impact Network (C-WIN) hereby formally object to the Board's consideration of these documents. We believe that to consider them outside of the formal hearing process would be a violation of Board hearing procedures and the public's due process rights and would risk the Board making a decision based on improper ex-parte communications.

Information in the late filed documents from DWR and USBR contains several conclusory statements of fact that could have been rebutted if properly presented in the hearing. CSPA had prepared voluminous rebuttal evidence to the testimony of Frances Mizuno, who intended to testify for Westlands/Delta Mendota. However, at the time of the hearing, her testimony was withdrawn and therefore the rebuttal testimony was not presented by CSPA. It was only after CSPA had concluded its presentation of evidence, and given its closing statement that DWR and USBR petitioned the Board to consider new evidence that *includes the same false information* previously withdrawn as testimony. Should the Board consider this new evidence, CSPA and every other party participant will have been denied their just opportunity for rebuttal, and will have had their due process hearing rights violated.

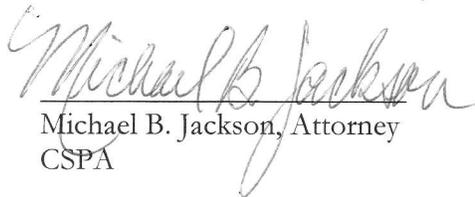
We understand that the considerably shortened time frame for this hearing made it difficult to timely assemble all relevant testimony and evidence. However, this difficulty was not borne exclusively by DWR and USBR. As the hearing officers are aware, several hearing participants and would-be participants were unable to assemble all of their testimony and exhibits prior to the deadline. None of them were afforded an extension for filing or for participation. It would therefore be unjust and inequitable to allow DWR and USBR to present late filed information when other participants were not afforded the same opportunity.

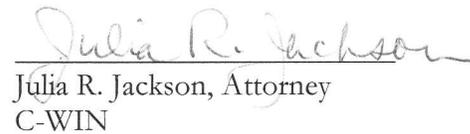
Not only did DWR and USBR's request for consideration of their documents come after the evidentiary portion of their case was closed, but it was also after the closing statements of all other party participants. If the Board now considers this information, it sets a dangerous precedent for all future water board hearings. Future participants would now justifiably

expect the Board to consider evidence presented outside of the confines of a properly noticed hearing. Parties in future hearings would no longer bear the burden of presenting evidence during their case-in-chief, as they would expect that additional information and argument could be made to the Board after the hearing was completed.

The Board has indicated that it intends to accept the evidence and has offered participants less than four days to prepare written comments on a CEQA process upon which they had received no notice. This remedy does not sufficiently cure the problem. While we understand that the Governor has requested an expedited hearing process in light of his Drought Declaration, we do not believe that he would want you to erode the public's ability to fully participate in the hearing process. We believe that the integrity of the State Water Board hearing procedures and the preservation of due process require a denial of DWR and USBR's request to consider evidence outside of the hearing. We therefore respectfully request that you do not consider the late filed documents from DWR and USBR in your decision on their change of place of use petition.

Very Truly Yours,


Michael B. Jackson, Attorney
CSPA


Julia R. Jackson, Attorney
C-WIN